

<p>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</p>	<p>Hearing Date/Agenda Number Date: 04-09-03 Item: 3.b.</p>			
<h1 style="margin: 0;">STAFF REPORT</h1>	<p>File Number CPA01-080-01</p>			
	<p>Application Type Conditional Use Permit Amendment</p>			
	<p>Council District 5</p>			
	<p>Planning Area Alum Rock</p>			
	<p>Assessor's Parcel Number(s) 601-38-077</p>			
<p>PROJECT DESCRIPTION Completed by: Mike Mena</p>				
<p>Location: Northeasterly side of White Road, approximately 300 feet northwesterly of the intersection of White Road and Story Road (1054 South White Road)</p>				
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;">Gross Acreage: 14.1</td> <td style="width: 33%; border: none;">Net Acreage: 14.1</td> <td style="width: 33%; border: none;">Net Density: N/A</td> </tr> </table>		Gross Acreage: 14.1	Net Acreage: 14.1	Net Density: N/A
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<p>APPLICANT/OWNER/DEVELOPER</p>				
<p>Pacific San José Holdings L.P. Attn: John Chamberlain 11455 El Camino Real #200 San Diego, CA 92130</p>				

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Mike Mena

Department of Public Works

None Received.

Other Departments and Agencies

- Luis DaSilva, San José Fire Department (attached).

GENERAL CORRESPONDENCE

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Pacific San José Holdings L.P., is requesting a Conditional Use Permit Amendment to allow the relocation of a monopole approved under a previous Conditional Use Permit (CP01-09-080). Installation of a wireless communications antennae monopole is a conditional use in the CG Commercial General Zoning District.

The subject 14.10 gross acre site is currently developed as a shopping center. The shopping center fronts on White Road to the southwest and Story Road to the southeast. Single-family residences border the site along its northeast and northwest edges. Additional single-family residences and some commercial uses are located across White and Story Roads to the southwest and southeast.

The previously approved permit (CP01-09-080) allows for the construction and use of a 50-foot tall wireless communications antennae enclosed within a 54-foot tall clock tower structure. The tower and associated equipment enclosure are approved at a freestanding location on the subject site in proximity to a driveway entrance off of White Road. With the proposed Amendment, the applicant seeks approval to relocate the antennae and clock tower enclosure to the rear of the shopping center in response to shopping center design and operational concerns, approximately 100 feet away from the nearest residential property.

In 1996, Planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennae posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennae were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennae. Further, staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennae.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project, as conditioned, is exempt from further environmental review under the provisions of the California Environmental Quality Act, specifically under Section 15303 (Small Structures) of the State Guidelines for Implementation. Because the proposed antennae would be enclosed within a clock tower structure, additional analysis of potential visual impacts is not warranted.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial (East Valley/680 Communities) in that wireless communication antennae as proposed are compatible with commercial uses, and the 50-foot-high wireless antennae are within the General Plan 50-foot height limit for the subject site. The proposed wireless antennae will be fully enclosed within the clock tower.

The maximum height of the clock tower structure is 54 feet. This height is consistent with the General Plan Urban Design Policy #11 which allows a height limit established in the context of project review for structures, other than buildings, where substantial height is intrinsic to the function of the structures and where such structures are located to avoid significant adverse effects on adjacent properties. The additional height of the clock tower structure is necessary to adequately cover the wireless communications antennae and avoid aesthetic impacts on adjacent properties. Therefore, the project height is consistent with the General Plan.

ANALYSIS

The applicant has requested approval to relocate the previously approved 54-foot clock tower and the enclosed wireless communications antenna to the back of the shopping center (see Figure 1) for the following reasons:

- ? Eliminate the need for the ancillary building for both AWS' and Verizon's equipment as the equipment can be housed in existing buildings.
- ? Improve visibility of individual shopping center tenants from White Road.
- ? Reduce the potential for graffiti and vandalism on the clock tower on the otherwise bare wall surfaces facing White Road which do not have other signage opportunities.
- ? Respect existing contractual agreements with tenants of the shopping center which require tenant approval for all structural elements that are proposed for common areas, particularly those that may hinder the visibility of tenant signage. Existing shopping center tenants were concerned regarding the original freestanding tower location on White Road, but are supportive of the new location at the rear of the site.

The primary issue associated with this proposal is consistency with City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities. The proposed relocation of the previously approved clock tower still meets the City's policies and guidelines as discussed below. The subject property and proposed relocation has been reviewed for consistency with the existing Policy as well as the Draft Update (attached) to the Policy. The Planning Commission

recommended approval of the Draft Update in October 2002, and the Policy is pending Council review.

The proposal is consistent with both the existing Council policy and the pending updates to the Council policy regarding wireless communication facilities in that:

1. The proposed wireless communications antennae are located and designed to minimize public visibility. A clock tower is proposed on the subject site that will completely enclose and cover the wireless communications antennae. Because the proposed clock tower will be architecturally integrated with the existing shopping center and the surrounding neighborhood, the project will not degrade the existing visual character or quality of the site or its surroundings.
2. The proposed wireless communications antennae would be located approximately 100-feet from the nearest residential parcel and would meet the 50-foot setback requirement.
3. The overall height of the clock tower, including antennae, does not exceed 54 feet as allowed in the CG-Commercial General Zoning District.
4. Based upon a previously submitted alternatives analysis by the applicant for the project, as well as a site visit and a review of a conceptual site plan and elevations, Planning staff has determined that the proposed clock tower with wireless communications antennae is consistent with City Council Policy 6-20, which permits wireless communications antennae within a free-standing structure in the General Commercial designation provided that no other site would be feasible to locate the proposed wireless facility.
5. Ancillary equipment will be enclosed within a building.
6. The project will not eliminate any required parking.

PUBLIC OUTREACH

A public hearing notice was mailed to the owners and tenants within 500 feet of the subject site and staff has been available to respond to any questions regarding the project.

Because the community expressed interest in the location of the antennae/clock tower structure at a previous community meeting, the proposed relocation of the clock tower and housed wireless communication antennae was presented at the (February 20, 2003) East Valley/680 Neighborhood Action Committee meeting. At the meeting some questions did arise as to why the relocation was being requested and if the clock tower would be retained. Once assured that the tower is being kept in the design of the project in order to address aesthetic concerns there appeared to be no opposition to the relocation of the clock tower and the wireless facility.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit Amendment with the following findings and conditions in its Resolution:

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram, land is located in the East Valley / 680 Communities SNI Area.
2. The project site is located in the CG-Commercial General Zoning District.
3. The Director of Planning has determined that this project is exempt from further environmental review under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA).
4. The project consists of wireless communications antennae enclosed within a clock tower structure.
5. The City Council Wireless Communication Facilities Policy permits wireless communications antennae in areas designated General Commercial on the General Plan.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project complies with all applicable provisions of the Zoning Ordinance.
2. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
3. The location of the wireless communications antennae has been determined to be appropriate per the Wireless Communications Facilities Policy based on the limited options in this area.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site;
or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit Amendment to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit amendment except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.
3. **Industrial Waste.** If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State

of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Story and White Road Plaza, 1054 South White Road, San José, CA 95127," dated February 14, 2003, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
4. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Mechanical Equipment.** No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DNL at the residential property line.
6. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
7. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
8. **Lighting.** This permit allows no on-site lighting except as specified on the approved plan set.
9. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
10. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
11. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.

12. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
13. **Colors and Materials.** All clock tower, wireless communications antennae, and ancillary equipment building colors and materials are to be those specified on the approved plan set.
14. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CPA 01-080-01, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
15. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
16. **Enclosures/Screening.** Equipment shall be enclosed with a building to match proposed clock tower architecture to the satisfaction of the Director of Planning.
17. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, wall and fence surfaces within 48 hours of defacement.
18. **Collocation.** The applicant and wireless communication facility operator shall facilitate the future collocation of wireless communication antennae within this clock tower. The applicant and wireless communication facility operator shall notify the Director of Planning, Building and Code Enforcement of any proposals by other wireless communications providers to collocate antennae within this clock tower. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this permit.
19. **Maximum Height.** The clock tower including wireless communication antennae shall not exceed fifty four (54) feet in height.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit Amendment shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit Amendment was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
- c: Victoria Willcox, 651 Gateway Boulevard, Suite 1500, South San Francisco CA 94080